



Comptroller General
of the United States
Washington, D.C. 20548

1135172

Decision

Matter of: Industrial Carting
File: B-258784
Date: February 16, 1995

DECISION

Industrial Carting protests the award of a contract to Bay Cities Refuse Service, Inc. under invitation for bids (IFB) No. N68378-93-B-0635, issued by the Department of the Navy for refuse collection and disposal services at the Naval Station, Treasure Island and Yerba Buena Island, San Francisco Bay, California. Industrial Carting alleges that the agency should have withheld its award decision until the firm was able to obtain a required permit from the Department of Public Health (DPH) for the City and County of San Francisco.

We dismiss the protest.

The IFB required the otherwise successful bidder to obtain a permit for refuse collection and disposal for the locations in question from DPH prior to award; in the alternative, the bidder could receive an award if it had obtained an emergency permit from DPH.

Bids opened on February 16, 1994. Industrial Carting submitted the low bid of \$951,939.26 and Bay Cities submitted the second-low bid of \$1,094,129.14. On April 1, the contracting officer requested that a pre-award survey be performed on Industrial Carting. On May 3, the survey was completed with a recommendation of "no award" because Industrial Carting lacked financial capacity. This recommendation was adopted by the contracting officer who found the protester to be nonresponsible. Since Industrial Carting is a small business, the matter was referred to the Small Business Administration (SBA) on June 13 for certificate of competency (COC) proceedings. The referral contained another basis for the contracting officer's decision--i.e., on June 8, the agency was informed that Industrial Carting had waited until May 27 to file an application for its DPH permit and that application had been returned to the firm as insufficient.

On July 7, SBA informed the Navy that Industrial Carting had sufficient financial resources to perform the contract; however, SBA declined to issue a COC pending resolution of the issue of Industrial Carting's DPH permit. SBA informed the Navy that Industrial Carting had submitted a completed application which DPH indicated could be processed in 30 days at the earliest. Following discussions between SBA and the Navy, an agreement was reached between the agencies to extend the COC process until September 23 to allow Industrial Carting time to obtain the required DPH permit.

DPH held a hearing on the protester's permit application on August 9 and on September 7 issued a permit to the firm effective October 1; the issuance of the permit was subject to the condition that it would not be valid if it was appealed within 15 days. Such an appeal was filed by Bay Cities and a hearing on the appeal was scheduled by DPH for November 9. Industrial Carting applied for an emergency permit; however, on September 23, the firm advised the Navy in writing that DPH would deny the application. Industrial Carting also requested the Navy to withhold the award until a permit could be obtained.

Also on September 23, SBA declined to issue a COC because Industrial Carting had failed to obtain a DPH permit. After consulting with DPH to determine whether Bay Cities had a valid permit and being advised that the firm did,¹ the contracting officer decided to award the contract to Bay Cities because she had no assurances as to the eventual outcome of the DPH appeal process and because, since September 30, 1993--when Bay Cities' contract awarded in 1992 expired--Bay Cities had been performing on the basis of separately priced month-to-month contract extensions at an average monthly price which was considerably higher than the price it bid under the IFB. The contracting officer signed the award document on September 26 and transmitted it to Industrial Carting by letter dated September 28. This protest followed.²

¹Industrial Carting's suggestion that Bay Cities did not have a permit at the time of award is incorrect. The allegation is based on the assumption that the firm's permit expired in September 1993 when its 1992 contract was complete. The record, however, demonstrates that DPH regarded the subsequent contract extensions, which lasted for another year, as continuing the permit in effect.

²Industrial Carting also alleges that, since it filed this protest within 10 calendar days of award, the Navy was required to suspend contract performance pursuant to 31 U.S.C. § 3553(d) (1988); the Navy disagrees. We need not (continued...)

Focusing on the end of the permit process, which was delayed until at least November 8 by operation of the procedures of the DPH when Bay Cities appealed, Industrial Carcing principally maintains that the agency acted unreasonably in not withholding the award until the protester could obtain the necessary permit from DPH.

In determining the responsibility of a bidder, a contracting officer is not required to provide the bidder with an indefinite amount of time to establish its responsibility. Only a reasonable amount of time need be provided for this purpose. Formal Management Sys., Inc., B-244512, Oct. 23, 1991, 91-2 CPD ¶ 362. Further, Federal Acquisition Regulation (FAR) § 19.602-1(a) provides that, where a contracting officer determines that a small business is not responsible, the contracting officer must withhold award and refer the matter to SBA to certify all elements of responsibility through the COC process. FAR § 19.602-2(a) provides that SBA will take specific actions in response to the COC referral within 15 business days unless the SBA and the contracting agency agree to a longer period. American Contract Servs., B-218039.2, June 12, 1985, 85-1 CPD ¶ 674. If the SBA has not issued a COC with the 15-day (or longer, if agreed to) period, the contracting officer is free to award the contract to another firm. Id.; FAR § 19.602-4(c).

The granting of extensions for filing or processing COC applications is a matter within the contracting agency's discretion; the bidder's interest are not controlling. American Contract Servs., supra. Since the matter is discretionary, we will not review a protest alleging that a contracting agency should withhold award for longer than the period prescribed (or agreed to), unless the record establishes that the failure to grant an extension is based on fraud or bad faith. Id. Here, there is no such showing and the protest is, therefore, dismissed.



John Van Schaik
Acting Assistant General Counsel

²(...continued)
resolve this dispute because, in light of our dismissal of the protest, the firm was not prejudiced by any alleged failure to suspend performance. See Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381.